THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NY 10007

ZACHARY W. CARTER
Corporation Counsel

LIZA J. SOHN
Assistant Corporation Counsel
(212) 356-2354
Fax: (212) 356-3509
lsohn@law.nyc.gov

July 6, 2015

BY ECF
Honorable Cheryl L. Pollack
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: Jean Rios v. City of New York, et al.,
14-CV-06992 (SLT) (CLP)

Your Honor:

I am an Assistant Corporation Counsel in the Office of Zachary W. Carter, Corporation Counsel of the City of New York, and the attorney for defendants in this case. I write in accordance with the Court's Order of June 26, 2015 regarding defendants' request that plaintiff provide a blanket § 160.50 release permitting defendants to obtain discovery relating to plaintiff's other arrests.

By way of background, plaintiff alleges that on May 7, 2014, at approximately 10:00 p.m., he was driving a vehicle at or near the vicinity of East 2nd Street and Avenue S in Brooklyn, New York, when he was stopped by a patrol car. Complt., ¶ 8. Plaintiff alleges that defendant police officers used excessive force against him, resulting in injuries to his face, scalp, and neck. Complt., ¶ 11. The complaint also alleges excessive pre-arraignment detention and illegal investigatory detention under federal and state law. Due to defendants' alleged unlawful seizure and their failure to promptly arraign him, plaintiff claims that he suffered emotional distress. Complt., ¶ 79, 81-82, 88, 90-94.

To the extent that plaintiff asserts a claim for excessive pre-arraignment detention and illegal investigatory detention, and seeks money damages pertaining to these claims, plaintiff's prior arrest history is reasonably calculated to lead to the discovery of relevant and admissible evidence. See Fryer v. City of New York, No. 10 Civ. 5879 (BMC) Slip op. at 2 (E.D.N.Y. May 4, 2011) (ordering the production of blanket 160.50 releases and allowing a further deposition of plaintiff, as documents related to plaintiff's prior arrests "have obvious potential relevance both as to credibility and damages"). Specifically, defendants submit that any prior arrests and incarcerations may demonstrate that plaintiff's purported damages, particularly any damages for mental anguish attendant upon his detention, were mitigated by any prior incarcerations and encounters with the criminal justice system. See Wilson v. City of New York, 06-CV-229 (ARR)(VVP), 2006 U.S. Dist. LEXIS 90050, at *1 (E.D.N.Y. 2006) (holding that plaintiff's prior experiences involving arrest and detention, including those which ended favorably and whose records are therefore sealed, may be relevant to the damages determination the jury will be asked to make at trial).

In Derisse v. City of New York, 12-CV-5192 (NGG)(MDG), 2013 U.S. Dist. LEXIS 113966 (E.D.N.Y. Aug. 13, 2013), the Court granted the City's motion to compel a release for records of prior arrests, incarcerations and prosecutions that were sealed pursuant to N.Y. C.P.L. § 160.50. The Court found that these records were relevant to plaintiff's claim for damages for emotional distress because "[a] plaintiff who has previously been incarcerated 'may suffer less damage as a result of a subsequent wrongful incarceration.'" Id., at *2, citing Cicero v. City of New York, 2011 U.S. Dist. LEXIS 80880 (E.D.N.Y. July 25, 2011). The Court stated that the records of plaintiff's prior arrest history were discoverable, and whether they would be admissible at trial would be decided by the trial judge. Id. at *3, see also, Cicero at *12 ("Whether any of these records ultimately are admitted at trial will be left for the trial judge to determine.")

At the telephone conference held on June 26, 2015, plaintiff's counsel, David Zelman, Esq., argued that only the length of each arrest should be disclosed. In Cicero, however, Mr. Zelman previously argued that the records surrounding the arrests should not be unsealed because they were only relevant to the extent that they disclosed the number of arrests and the length of the incarceration. Cicero, 2011 U.S. Dist. LEXIS 80880 at *10. This Court noted that "the details of plaintiff's prior arrests may be relevant to assessing his emotional damages in the pending litigation" and ordered the plaintiff to produce an authorization for all prior arrest records. Id. at *12. Here, plaintiff alleges emotional damages arising from his detention. As in Derisse and Cicero, plaintiff's emotional damages may have been mitigated by his prior arrests, and as such, the records of plaintiff's arrest history are discoverable.

For the above reasons, defendants move the Court to compel plaintiff to provide a blanket § 160.50 unsealing release for records related to plaintiff's other arrests.

Thank you for your consideration herein.

Respectfully submitted,

Liza Sohn

Liza Sohn
Assistant Corporation Counsel

cc:
BY ECF

David Zelman, Esq.
Attorney for Plaintiff